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February 6, 2019

Steve Glau
Watkins Manufacturing Corporation
1280 Park Center Dr
Vista California 92081

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

C T Corporation System
818 W. 7th Street Ste 930
Los Angeles CA 90017

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Watkins Manufacturing Corporation Violations of General Industrial Permit

Dear Mr. Glau:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Watkins Manufacturing Corporation ("Watkins")'s violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Industrial Permit).[1] This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for Watkins' facility located at 1280 Park Center Drive, Vista, California, 92081 ("Facility"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. 1365(b)(1)(A)). This letter provides notice of Watkins' Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF's mailing address is 1140 S. Coast

[1] The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New Industrial Permit."

Highway 101, Encinitas, CA 92024. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Watkins' ongoing illegal activities are discharged, namely Agua Hedionda Creek, Agua Hedionda Lagoon, and ultimately the Pacific Ocean.

The public and members of CERF use Agua Hedionda Creek, Agua Hedionda Lagoon and the Pacific Ocean to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Watkins Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Watkins Owners and/or Operators' failure to comply with the Clean Water Act and the Industrial Permit.

II. Storm Water Pollution and the Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge. Watkins enrolled as a discharger subject to the New Industrial Permit on January 30, 2015 with WDID No. 9 37I005398. Watkins originally enrolled under the Industrial Permit on September 1, 2005.

Pursuant to the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial Permit renewal application. (*Id.*). As an enrollee, Watkins has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

B. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements of the Industrial Permit (and New Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (Industrial Permit §A; New Industrial Permit, Finding I.54, §X). Watkins has not developed an adequate SWPPP as required by the New Industrial Permit.

As noted in CERF's March 10, 2017 Notice of Intent to Sue, the SWPPP's site plan fails to include all elements as required by New Industrial Permit Section X.E. The SWPPP fails to identify nearby water bodies, municipal storm drain inlets, locations where materials are directly exposed to precipitation, and areas of industrial activity, including outdoor storage areas, shipping and receiving areas, waste treatment and disposal areas, material reuse areas, and vehicle and equipment storage/maintenance areas. (New Industrial Permit, §X.E.3.).

In particular, the SWPPP and site map fail to identify industrial storage and activity in the western portion of the site, currently marked as "Parking (Non-Industrial)." Outdoor materials accumulation and storage in the western/north-western portion of the site drains to a discharge point inaccurately identified as a non-industrial discharge point (west of the Spa Manufacturing Building). As a result, not all industrial discharge points have been monitored and sampled as required. (New Industrial Permit, §XI.A.1., 2., and B.4.-6.).

The SWPPP also fails to identify: (1) numerous additional storm water inlets east of the Distribution Center Building; (2) discharge of industrial storm water at the two exits/entrances to/from Hot Spring Way; and (3) the potential for erosion on the eastern side of the Spa Manufacturing Building, resulting in the comingling of pollutants with industrial storm water at the Facility. (See, SWPPP, p. 16, Section 4.4; see WATKINS000188; WATKINS000250-251; WATKINS000689; WATKINS000707).


[WATKINS000689]

The Watkins SWPPP dated May 2018 also fails to adequately assess the Facility's potential contribution of 303(d) listed pollutants to receiving waters. Per section X.G.2.a.ix of the New Industrial Permit, the Watkins Owners and/or Operators are required to assess the potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New Industrial Permit, §X.G.2.a.ix). The SWPPP fails to assess the potential presence of all 303(d)-listed constituents, including Phosphorus, at the Facility (SWPPP, pp. 53-54). Though the SWPPP acknowledges the presence of nitrogen and metals, it simply claims these pollutants are not exposed to storm water and therefore fails to include them in the SWPPP Monitoring Implementation Plan. (*Id.*). Information available to CERF, including monitoring data and visual observations, indicates these pollutants are in fact exposed to storm water at the Facility. As reflected in the Permit's Fact Sheet, monitoring data is intended to inform dischargers such as Watkins of the efficacy of their BMPs. (New Industrial Permit Fact Sheet, pp. 42-44). Thus, Watkins failure to sample for such constituents despite the fact that nitrogen, metals and phosphorus are present at the Facility (and in the Facility's discharge)[2] constitutes a violation the Permit. (New Industrial Permit, §X.G. 2; §XI.B.6.c.,e). Watkins' failure to monitor these parameters despite its repeated monthly storm water survey findings that housekeep BMPs were ineffective and debris and materials were routinely exposed prior to rain

[2] See Table 1

events is all-the-more egregious. (See, WATKINS000702-708; WATKINS000722-724; WATKINS000681-684).

Every day the Watkins Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the Industrial Permit, the New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Watkins Owners and/or Operators have been in daily and continuous violation of the Industrial Permit since at least February 6, 2014. These violations are ongoing and the Watkins Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the Watkins Owners and/or Operators are liable for civil penalties of up to $37,500 per day for violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

C. Failure to Monitor and Report

The Watkins Owners and/or Operators have failed to sample as required since CERF's last notice letter, dated March 10, 2017.

The New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). The Permit also requires dischargers to submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining the results. (New Industrial Permit, §XI.B.2). Watkins has failed to sample two qualifying storm events during the first half of the 2018-2019 year as required, despite the fact that November 29, 2018 constituted a QSE. CERF was able to obtain a sample on that date and verify discharges from the Facility. Nonetheless, Watkins did not monitor its discharge. Watkins only sampled on December 5, 2018 during the first half of the reporting period.

In addition, Watkins sampled its discharge at Outfall 2, 3, and 4 on December 30, 2016 but failed to submit the results to SMARTS. (See Exhibit A). Notably, a "Rain Sampling Reports 2016" uploaded to SMARTS states "Rain began at approximately 6:00 PM on December 30 and continued through the morning of December 31. We did not sample because we could not meet the time parameters for sampling." (See SMARTS Attachment ID 1920295). This is false. As noted in the email included in Exhibit A, Watkins employee Jerome Stout did "not accept" the high TSS results for Outfall 2, and as a result, presumably decided not to upload the unfavorable results, in violation of the Permit. (New Industrial Permit, §XI.B.2).

The Permit contains numerous provisions which ensure the accuracy of reported information. For example, Section XXI.J. requires dischargers take samples and measurements that are "representative of the monitored activity." Further, the Legally Responsible Person or Duly Authorized Representative must certify all documents submitted via SMARTS. (New Industrial Permit, §XXI.K.1.). **Any person signing, certifying, or submitting such documents does so under penalty of perjury**. (New Industrial Permit, §XXI.L.).

Both the Industrial Permit and the Clean Water Act make it unlawful to falsify reports, punishable by a $10,000 fine or by imprisonment, or both. (Industrial Permit, §XXI.N; 33 U.S.C. §1319(c)(1)). In addition to knowing falsification, negligent violation of the Clean Water Act is

also punishable through criminal penalties. (33 U.S.C. §1319(c)(1)). Ignorance of the Permit requirements does not constitute a legal defense for failure to comply. (*U.S. v. Weitzenhoff* (9th Cir. 1993) 35 F.3d 1275, 1284 ["criminal sanctions are to be imposed on an individual who knowingly engages in conduct that results in a permit violation, regardless of whether the polluter is cognizant of the requirements or even the existence of the permit"] emphasis added; *U.S. v. Sinskey* (8th Cir. 1997) 119 F.3d 712, 715–16 ["Given this interpretation of the statute, the government was not required to prove that Sinskey knew that his acts violated either the CWA or the NPDES permit, but merely that he was aware of the conduct that resulted in the permit's violation."]).

Every day the Watkins Owners and/or Operators fail to submit accurate and complete monitoring and sampling data is a separate and distinct violation of the Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). Watkins has been in daily and continuous violation of the Industrial Permit's reporting requirements every day since at least January 24, 2017, the date of the monitoring report. These violations are ongoing and the Watkins Owners and/or Operators, as well as Mr. Stout, will continue to be in violation every day they fail to revise and submit accurate and complete monitoring data.

In addition, the Watkins SWPPP incorrectly identifies O-10 as a drainage area with no exposed industrial activity. (SWPPP, May 2018, p. 49). However, as reflected in the May 2017 Site Map, O-10 receives drainage from the tooling shop, drainage area 2, the propane tank area outdoor storage areas 4 and 6, and drainage area 3. Therefore, O-10 is subject to discharge from industrial activities at the Facility and should be monitored.

Further, O-7, O-8, and O-9 are not sampled. According to the SWPPP, O-1 is representative of these drainage areas and is therefore sampled instead. (SWPPP, May 2018, p. 50). However, O-1 does not provide sufficient runoff for sampling. For example, in 2016, O-1 only produced sufficient discharge to sample once while the other outfalls were sampled four times. (See SMARTS Attachment ID 1920295). During the March and May 2018 rain events, O-1 again did not produce sufficient discharge for sampling. If Outfalls 7-9 produced sufficient discharge during these rain events, they could and should have been monitored.

Relatedly, as noted above, Watkins has failed to appropriately identify industrial storage and activity in the western portion of the site, currently marked as "Parking (Non-Industrial)." Outdoor materials accumulation and storage in the western/north-western portion of the site drains to a discharge point inaccurately identified as a non-industrial discharge point (west of the Spa Manufacturing Building). As a result, this industrial discharge point has not been monitored and sampled as required. Moreover, information available to CERF indicates this same discharge point receives flows via underground storm drains from industrial discharge points throughout the Facility, including those north of the Spa Manufacturing Building not currently monitored.

Every day the Watkins Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the Watkins Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The Watkins Owners and/or Operators are thus subject to

penalties in accordance with the Industrial Permit – punishable by a minimum of $37,500 per day of violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

D. Discharges of Polluted Storm Water from the Watkins Facility in Violation of Storm Water Permit Discharge Prohibitions.

Discharge Prohibition III.D. of the Industrial Permit prohibits discharges that violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans), or statewide water quality control plans and policies. (See New Industrial Permit, Discharge Prohibition III.D.). In addition, Discharge Prohibition III.C. prohibits storm water discharges and authorized non-storm water discharges that contain pollutants that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the Water Code.

The Water Quality Control Plan for the San Diego Basin (San Diego Basin Plan) designates beneficial uses for water bodies in the San Diego region and establishes water quality objectives and implementation plans to protect those beneficial uses. The San Diego Basin Plan further establishes Waste Discharge Prohibitions. Waste Discharge Prohibition number 5 of the San Diego Basin Plan states, "the discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with the applicable receiving water quality objectives, is prohibited. Allowances for dilution may be made at the discretion of the Regional Board." "Waste" is defined as, "waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation," which includes discharges of pollutants in storm water. Accordingly, where the "quality of the discharge" does not meet water quality objectives, the discharge, absent an express "allowance for dilution" by the San Diego Regional Water Quality Control Board is prohibited by Discharge Prohibition III.D. of the New Industrial Permit.

Information available to CERF, including its review of publicly available information and observations, indicates that no express allowance for dilution has been granted by the Regional Water Board applicable to these Receiving Waters or the Watkin's Facility's discharges. As such, the analytical results of storm water sampling at the Facility demonstrate that the Watkins Facility Owners and/or Operators have violated and continue to violate Discharge Prohibition III.D. of the Permit by discharging storm water containing pollution in excess of water quality objectives listed in the San Diego Basin Plan. Specifically, Facility discharges have exceeded Basin Plan water quality objectives for numerous pollutants.

Table 1

No.	Date	Sample Location/ Latitude	Sample Location/ Longitude	Parameter	Units	Result	Benchmark/ WQO	Benchmark/ NAL
1	2/27/2018	Downstream Outfall 5		Iron, Total	mg/L	.611	.3[1]	1.0
2	11/29/2018	Downstream		Iron, Total	mg/L	.547	.3[1]	1.0

		Outfall 5						
3	9/15/2015	33.14445 Outfall 1	-117.23648	Total Suspended Solids (TSS)	mg/L	238	100[3]	100
4	12/16/2016	33.14516 Outfall 3	-117.23762	Total Suspended Solids (TSS)	mg/L	167	100[3]	100
5	12/30/2016	Outfall 2		Total Suspended Solids (TSS)	mg/L	305	100[3]	100
6	12/5/2018	33.14443 Outfall 5	-117.23924	Total Suspended Solids (TSS)	mg/L	140	100[3]	100
7	2/27/2018	Downstream Outfall 5		Manganese	mg/L	.0509	.05[1]	1.0
8	11/29/2018	Downstream Outfall 5		Manganese	mg/L	.0524	.05[1]	1.0
9	2/27/2018	Downstream Outfall 5		Phosphorus, Total (as P)	mg/L	.43	.1[1]	2.0
10	2/27/2018	Downstream Outfall 5		Phosphorus, Total (as P)	mg/L	.17	.1[1]	2.0
11	11/29/2018	Downstream Outfall 5		Copper, Total	mg/L	.017	.013[2]	.0332
12	2/27/2018	Downstream Outfall 5		Zinc, Total	mg/L	.204	.12[2]	.26
13	11/29/2018	Downstream Outfall 5		Zinc, Total	mg/L	.208	.12[2]	.26
14	1/5/2016	33.14398 Outfall 4	-117.23551	pH	SU	8.68	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
15	1/5/2016	33.14445 Outfall 1	-117.23648	pH	SU	8.66	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
16	3/11/2016	33.14398 Outfall 4	-117.23551	pH	SU	8.81	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
17	12/16/2016	33.14398 Outfall 4	-117.23551	pH	SU	8.95	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
18	12/16/2016	33.14521 Outfall 4	-117.23817	pH	SU	8.92	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
19	12/16/2016	33.14516 Outfall 3	-117.23762	pH	SU	8.96	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
20	1/5/2017	33.14516 Outfall 3	-117.23762	pH	SU	8.63	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
21	1/5/2017	33.14516 Outfall 3	-117.23762	pH	SU	8.87	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
22	1/5/2017	33.14398 Outfall 4	-117.23551	pH	SU	9.18	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
23	1/9/2017	33.14516	-117.23762	pH	SU	8.96	Not < 6.5 or	Not < 6.0 or >

		Outfall 3					> 8.5[4]	9.0
24	1/9/2017	33.14398 Outfall 4	-117.23551	pH	SU	8.95	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
25	12/5/2018	33.1451 Outfall 2	-117.23598	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
26	12/5/2018	33.14445 Outfall 1	-117.23648	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
27	12/5/2018	33.14521 Outfall 4	-117.23817	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
28	12/5/2018	33.14443 Outfall 5	-117.23924	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
29	12/5/2018	33.14516 Outfall 3	-117.23762	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0
30	12/5/2018	33.14398 Outfall 4	-117.23551	pH	SU	6	Not < 6.5 or > 8.5[4]	Not < 6.0 or > 9.0

[1] Basin Plan Objective for Agua Hedionda Creek, p. 3-13 San Diego Basin Plan
[2] California Toxics Rule based on 100 mg/L hardness
[3] Multi-Sector General Permit 2015 EPA Benchmark
[4] Basin Plan Objective for inland surface waters, p. 3-25 San Diego Basin Plan

As demonstrated by the data in in the table above (Table 1), that the Watkins Facility Owners and/or Operators have failed and continue to fail to discharge pollutants in storm water at or below Basin Plan water quality standards.

The New Industrial Permit's Discharge Prohibition is violated each time storm water discharges from the Facility. These discharge violations are ongoing and will continue every time the Watkins Facility Owners and/or Operators discharge polluted storm water without meeting water quality objectives. Each time Watkins discharges polluted storm water in violation of Discharge Prohibition III.D. the Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Watkins has been in violation since February 6, 2014, and CERF will update the dates of violations when additional information and data become available.

Notably, Discharge Prohibition III.D. is an independent Storm Water Permit requirement and the iterative process triggered by exceedances of the NALs listed at Table 2 of Permit does not amount to compliance with the Discharge Prohibitions. The NALs do not represent Basin Plan water quality objectives. Thus, even if Watkins is engaged in the NAL iterative process and submits an Exceedance Response Action Plan under Section XII. of the Permit, the violations of the Discharge Prohibitions described herein are ongoing and continuous.

E. Discharges of Polluted Storm Water from the Watkins Facility in Violation of Storm Water Permit Effluent Limitation.

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic and

non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. The 2015 Permit includes the same effluent limitation. (See New Industrial Permit, Effluent Limitation V.A).

Information available to CERF, including its review of publicly available information and observations, indicates BMPs that achieve BAT/BCT have not been developed and/or implemented at the Facility. Consistent with CERF's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that Watkins has failed and continues to fail to develop and/or implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Table 1 above includes sample results of storm water discharges collected from the Facility. As demonstrated by the data, Watkins has failed and continues to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

CERF puts Watkins on notice that the Storm Water Permit Effluent Limitation is violated each time storm water discharges from the Facility. These discharge violations are ongoing and will continue every time Watkins discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Watkins discharges polluted storm water in violation of Effluent Limitation V.A. of the New Industrial Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Watkins has been in violation since February 6, 2014, and CERF will update the dates of violations when additional information and data become available. Watkins is subject to civil penalties for all violations of the Clean Water Act occurring since February 6, 2014.

Permit Effluent Limitation V.A. is an independent requirement and the iterative process triggered by exceedances of the NALs does not amount to compliance with Effluent Limitation V.A. Thus, even if Watkins is engaged in the NAL iterative process and submits an Exceedance Response Action Plan, the violations of Effluent Limitation V(A) described herein are ongoing and continuous.

F. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[3] The New Industrial Permit includes the same receiving water limitation. (See New Industrial Permit, Receiving Water Limitation VI.A.). Discharges that contain pollutants in excess of applicable WQS violate the Storm Water Permit

[3] "Water Quality Standards" consist "of beneficial uses, water quality objectives to protect those uses, an antidegradation policy, and policies for implementation. Water quality standards are established in Regional Water Quality Control Plans (Basin Plans) and statewide Water Quality Control Plans. U.S. EPA has also adopted water quality criteria (the same as objectives) for California in the National Toxics Rule and California Toxics Rule." (New Industrial Permit, Glossary, p.8).

Receiving Water Limitations. (See 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.). The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard. (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. (See New Industrial Permit, Receiving Water Limitation VI.B). Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitation. (See 1997 Permit, Receiving Water Limitation C(1); New Industrial Permit, Receiving Water Limitation VI.B).

As reflected in Table 1, storm water sampling at the Watkins Facility demonstrates that its discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS, and thus violate Receiving Water Limitation VI(A) of the New Industrial Permit. For example, the Basin Plan water quality objective for iron for Agua Hedionda Creek is .3 mg/L. (San Diego Basin Plan, p. 3-13). Discharges from the Facility have shown concentrations of iron at or nearly double this standard. (See Table 1 above). Likewise, the Basin Plan water quality objective for phosphorus for the Creek is .1 mg/L, but the Facility's discharges contain concentrations up to four times this standard. (*Id.*). As noted below, Agua Hedionda Creek is impaired for phosphorus. Thus, the Watkins' discharges cause or contribute to a violation of the applicable WQS, and thus violate Receiving Water Limitation VI(A).

Agua Hedionda Creek's beneficial uses include (Basin Plan, p. 2-31):

Municipal and Domestic Supply (MUN) – Includes uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply.

Agricultural Supply (AGR) - Includes uses of water for farming, horticulture, or ranching including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing.

Industrial Service Supply (IND) - Includes uses of water for industrial activities that do not depend primarily on water quality including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well re-pressurization.

Contact Water Recreation (REC-1) - Includes uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and SCUBA diving, surfing, white water activities, fishing, or use of natural hot springs.

Non-contact Water Recreation (REC-2) – Includes the uses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where

ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.

Warm Freshwater Habitat (WARM) – Includes uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates.

Wildlife Habitat (WILD) - Includes uses of water that support terrestrial ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.

Preservation of Biological Habitats of Special Significance (BIOL) - Includes uses of water that support designated areas or habitats, such as established refuges, parks, sanctuaries, ecological reserves, or Areas of Special Biological Significance (ASBS), where the preservation or enhancement of natural resources requires special protection.

Agua Hedionda Lagoon's beneficial uses include: IND, REC1, REC2, BIOL, WILD, and the following:

Commercial and Sport Fishing (COMM) - Includes the uses of water for commercial or recreational collection of fish, shellfish, or other organisms including, but not limited to, uses involving organisms intended for human consumption or bait purposes.

Estuarine Habitat (EST) - Includes uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (e.g., estuarine mammals, waterfowl, shorebirds).

Marine Habitat (MAR) - Includes uses of water that support marine ecosystems including, but not limited to, preservation or enhancement of marine habitats, vegetation such as kelp, fish, shellfish, or wildlife (e.g., marine mammals, shorebirds).

Rare, Threatened, or Endangered Species (RARE) - Includes uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened or endangered.

Migration of Aquatic Organisms (MIGR) - Includes uses of water that support habitats necessary for migration, acclimatization between fresh and salt water, or other temporary activities by aquatic organisms, such as anadromous fish.

Spawning, Reproduction, and/or Early Development (SPWN) - Includes uses of water that support high quality habitats suitable for reproduction, early development and sustenance of marine fish and/or cold freshwater fish.

Shellfish Harvesting (SHELL) - Includes uses of water that support habitats suitable for the collection of filter-feeding shellfish (e.g., clams, oysters and mussels) for human consumption, commercial, or sport purposes.

The Lagoon is also designated a State Marine Reserve and Ecological Reserve. (San Diego Basin Plan, Chapter 2).

Agua Hedionda Creek and Lagoon are impaired – and thus unable to support these designated beneficial uses – for some of the very pollutants found in the Watkins' Facility discharges, including manganese, nitrogen, phosphorus, selenium, and total dissolved solids. Information available to CERF indicates that the Facility's storm water discharges contain elevated concentrations of these impairment-causing pollutants, such as phosphorus. Phosphorus impacts the warm freshwater habitat beneficial use of Agua Hedionda Creek. Excess concentrations of nutrients such as phosphorus and nitrogen can reduce levels of dissolved oxygen and cause hypoxia or harmful algal blooms that can create toxins. Such toxins can move up the food chain.[4] Nigh nitrogen and phosphorus loadings also result in reduced spawning grounds and nursery habitats, fish kills, and public health concerns related to impaired drinking water sources and increased exposure to toxic microbes.[5] The Creek is further impaired for manganese, which also impacts the municipal & domestic supply beneficial use.

Therefore, discharges of elevated concentrations of pollutants in storm water from the Watkins Facility impact both of these water bodies and also adversely impact human health. The Facility's harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. (New Industrial Permit, Receiving Water Limitation VI(B)). In addition, Watkin's discharges contain pollutants in quantities (i.e. above applicable water quality objectives and/or benchmarks) that threaten to cause pollution or a public nuisance. (New Industrial Permit, Receiving Water Limitation VI(C)).

The Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. (See, e.g., Table 1 above). Each time discharges of storm water from the Facility: (1) cause or contribute to a violation of an applicable WQS; (2) adversely impact human health or the environment; or (3) contain pollutants in quantities that threaten to cause pollution or a public nuisance constitutes a separate and distinct violation of the Receiving Water Limitations VI(A-C) of the New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Watkins has been in violation since February 6, 2014, and CERF will update the dates of violation when additional information and data becomes available. Watkins is subject to civil penalties for all violations of the Clean Water Act occurring since such date.

Receiving Water Limitations are independent Storm Water Permit requirements. The NALs do not represent water quality based criteria relevant to a determination of whether an

[4] https://www.epa.gov/nutrientpollution/effects-environment; Agua Hedionda Lagoon is impaired for toxicity based on sediment data gathered from the eastern portion of the Lagoon.
[5] https://www.epa.gov/sites/production/files/2014-08/documents/nutrient-memo-may252007.pdf

industrial facility has caused or contributed to an exceedance of a WQS, or is causing adverse impacts to human health or the environment. Thus, even if Watkins is engaged in the NAL iterative process and submits an Exceedance Response Action Plan, the Receiving Water Limitations violations described herein are ongoing and continuous.

G. Unauthorized Non-Storm Water Discharges

Except as authorized by Section IV of the New Industrial Permit, permittees are prohibited from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. (New Industrial Permit, §III.B.; IV.A-B).

As indicated in CERF's March 10, 2017 Notice of Intent to Sue, information available to CERF indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur from the Facility's sink in the tooling area which drains directly onto the exposed pavement. (See Exhibit B). In addition, unauthorized non-storm water dischargers occur routinely at the un-named industrial discharge point west of the Spa Manufacturing Building, at the western edge of the parking lot. Specifically, significant dry weather flows were observed at this discharge point on January 25, 2019. These discharges were sufficient to reach the Vista MS4.

Watkins' unauthorized non-storm water discharge violations are ongoing and will continue until the Watkins Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Watkins Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition III.B. of the Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). CERF will update the number and dates of violations when additional information becomes available. The Watkins Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 6, 2014.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Watkins must develop and implement a SWPPP which complies with all elements required in the New Industrial Permit, including the requisite monitoring, and address the consistent, numerous, and ongoing violations at the Facility. Should the Watkins Owners and/or Operators fail to do so, CERF will file an action against Watkins for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act 1365(a)(d). CERF will seek the maximum penalty available under the law which is $37,500 per day of violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1). CERF may further seek a court order to prevent Watkins from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

Marco A. Gonzalez
Livia B. Beaudin
COAST LAW GROUP LLP
1140 S. Coast Highway 101
Encinitas, CA 92024
Tel: (760) 942-8505 x 102
Fax: (760) 942-8515
Email: marco@coastlawgroup.com
livia@coastlawgroup.com

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP, LLP

Marco A. Gonzalez

Livia Borak Beaudin
Attorneys for Coastal Environmental Rights Foundation

cc:

VIA U.S. MAIL

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Mike Stoker
Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Eileen Sobeck
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812–0110

David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, California 92108

EXHIBIT A

Livia Borak Beaudin

From: Jerome Stout
Sent: Tuesday, January 24, 2017 1:16 PM
To: Craig Douglas
Cc: Steven Glau
Subject: FW: Analytical Report
Attachments: Watkins Mfg 1640361.pdf

Craig,

Attached is the analytical for the storm water samples taken on December 30. I have asked them to re-run the TSS results for Outfall #2. I do not accept this number. The TSS for the sample taken on December 16 was only 14. Samples taken for this outfall on Jan. 5, 2016 and March 11, 2016 had TSS readings of 70 and 17, respectively.

I am harboring serious doubts about the quality of D-Tek. What is the name and contact number of the lab you mentioned before. I believe it was SDG&E. If I remember correctly, you said they will send a courier to get the samples. Thank you for your help.

Jerry

From: Cris Kroeger [mailto:cris@dteklabs.com]
Sent: Tuesday, January 24, 2017 11:39 AM
To: Jerome Stout <Jerome.Stout@watkinsmfg.com>
Subject: Analytical Report

One file attached.

Note:

The sampling date on the COC is 10/30/16. I assumed this was just written incorrectly and corrected it in the COC. The report has the sampling date of 12/30/16.

Thank you,

Cris R. Kroeger
DTEK Analytical Laboratories, Inc.
760-930-2555

D-TEK ANALYTICAL LABORATORIES, INC.
2722 Loker Ave. West, Suite B
Carlsbad, CA 92010
(760) 930-2555 FAX (760) 930-2510

Watkins Mfg
1280 Park Center Dr
Vista, CA 92081

Date Sampled: 12/30/16
Date Received: 12/30/16
Date Reported: 01/24/17

Attn: Jerry Stout

Project ID: N/A
Log Numbers: 16-5184 through 16-5186
Sample IDs: Tooling (Outfall 2) through Wood Shop (Outfall 4)

The following are attached:

* Analytical Report
* Quality Control Report
* Chain-of-Custody

Testing was conducted using EPA or equivalent methods approved by the State of California Department of Health Services. All applicable QC met the required acceptance criteria.

Thank you for choosing D-TEK to serve your analytical needs!

Reviewed and approved:

Cris Kroeger
Operations Manager

D-TEK ANALYTICAL LABORATORIES, INC.
2722 Loker Ave. West, Suite B
Carlsbad, CA 92010
(760) 930-2555 FAX (760) 930-2510

Watkins Mfg
1280 Park Center Dr
Vista, CA 92081

Attn: Jerry Stout

Date Reported: 01/24/17
Date Sampled: 12/30/16
Date Received: 12/30/16
Sample Type: WATER

Project ID: N/A

Log Number: 16-5184
Sample ID: Tooling (Outfall 2)

ANALYTICAL RESULTS

Analysis	Results	Units	Method	Analyst/Date
Oil & Grease	3.2	mg/L	EPA1664A	AC 12/30/16
TSS	305	mg/L	SM2540D	AC 12/30/16

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Watkins Mfg
1280 Park Center Dr
Vista, CA 92081

Attn: Jerry Stout

Date Reported: 01/24/17
Date Sampled: 12/30/16
Date Received: 12/30/16
Sample Type: WATER

Project ID: N/A

Log Number: 16-5185
Sample ID: Distribution (Outfall 3)

ANALYTICAL RESULTS

Analysis	Results	Units	Method	Analyst/Date
Oil & Grease	3.4	mg/L	EPA1664A	AC 12/30/16
TSS	50	mg/L	SM2540D	AC 12/30/16

D-TEK ANALYTICAL LABORATORIES, INC.
2722 Loker Ave. West, Suite B
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Watkins Mfg
1280 Park Center Dr
Vista, CA 92081

Attn: Jerry Stout

Date Reported: 01/24/17
Date Sampled: 12/30/16
Date Received: 12/30/16
Sample Type: WATER

Project ID: N/A

Log Number: 16-5186
Sample ID: Wood Shop (Outfall 4)

ANALYTICAL RESULTS

Analysis	Results	Units	Method	Analyst/Date
Oil & Grease	8.9	mg/L	EPA1664A	AC 12/30/16
TSS	15	mg/L	SM2540D	AC 12/30/16

D-TEK ANALYTICAL LABORATORIES, INC.
2722 Loker Ave. West, Suite B
Carlsbad, CA 92010
(760) 930-2555 FAX (760) 930-2510

QUALITY CONTROL DATA REPORT

Report Date: 01/24/17

Log Numbers: 16-5184 through 16-5186

* **LCS** - Laboratory Control Sample. The LCS is a blank spiked with a known amount of method analyte(s) obtained from independent standards and is carried through all sample preparation and analytical procedures. Recoveries are calculated in order to evaluate method accuracy.

* **Spike** - The spike is an actual sample spiked with a known amount of method analyte(s) and is carried through all sample preparation and analytical procedures. Recoveries are calculated in order to evaluate potential matrix interferences.

* **RPD** = Rel % Difference = ((Result 1 - Result 2) / Average Result) X 100% The RPD provides a measure of method precision by comparing analytical results of 2 duplicate samples.

* **% Recovery** = ((Spike Sample Result - Sample Result) / Spike Conc) X 100% The result of the unspiked sample is treated as zero if it is less than established reporting limits.

D-TEK ANALYTICAL LABORATORIES, INC.
2722 Loker Ave. West, Suite B
Carlsbad, CA 92010
(760) 930-2555 FAX (760) 930-2510

QUALITY CONTROL DATA REPORT
Method(s): Inorganics

Report Date: 01/24/17

Log Numbers: 16-5184 through 16-5186

No target analytes were detected in the Method Blanks.

Analysis	Method	LCS % Recovery	Spike % Recovery	Duplicate RPD
Oil & Grease	EPA1664A	101		
TSS	SM2540D	99		

D-TEK Analytical Laboratories, Inc.
2722 Loker Ave. West, Suite B
Carlsbad, CA 92010
(760) 930-2555, FAX (760) 930-2510

CHAIN OF CUSTODY

COC No. 1640361

PAGE 1 OF 1

CUSTOMER INFORMATION		PROJECT INFORMATION	
COMPANY: Watkins Mfg.	CONTACT PERSON: J. Stout	PROJECT NAME/NUMBER	# OF CONTAINERS
PROJECT MANAGER: J. Stout		BILLING INFORMATION	
ADDRESS: 1280 Park Center Dr.		BILL TO: Watkins	
CITY: Vista	STATE: CA ZIP: 92081	ADDRESS: Same	
PHONE: 760-598-6464 x423	FAX: 760-598-3913	PHONE:	
		P.O #:	

D-TEK LOG # LAB USE ONLY	SAMPLE # / SAMPLE IDENTIFICATION	SAMPLE DATE	SAMPLE TIME	SAMPLE MATRIX	CONTAINER TYPE	# OF CONTAINERS	ANALYSIS REQUEST: 8260	ANALYSIS REQUEST: TSS
16-5184	Tooling (outfall 2)	~~12/30/16~~ 10/30/16	1045	H_2O	plastglass	2	1	1
16-5185	Distribution (outfall 3)	~~10/30/16~~	1100	"	"	2		
16-5186	Wood Shop (outfall 4)	~~10/30/16~~	1110	"	"	2		

SAMPLE INTEGRITY

SAMPLES COLLECTED BY: J. Stout & James Slawson

EMPLOYER: Watkins Mfg.

California DPH EDT required? Y N

PWS Number:

1. RELINQUISHED BY	2. RELINQUISHED BY	3. RELINQUISHED BY	SAMPLE RECEIPT	SPECIAL INSTRUCTIONS
PRINTED NAME: Jerome R. Stout	PRINTED NAME:	PRINTED NAME:	RECEIVED IN ICE? Y/N NA	
SIGNATURE: Jerome R Stout	SIGNATURE:	SIGNATURE:	TAPE SEAL INTACT Y/N NA	
DATE AND TIME: 12/30/16 1200	DATE AND TIME:	DATE AND TIME:	PRESERVATIVE YES/NO NA	
1. RECEIVED BY	2. RECEIVED BY	3. RECEIVED BY	pH VERIFIED: YES/NO NA	
PRINTED NAME: Chris K Kroeger	PRINTED NAME:	PRINTED NAME:		
SIGNATURE: Chris K Kroeger	SIGNATURE:	SIGNATURE:	Recorded temp_____	
DATE AND TIME: 12/30/16 1200	DATE AND TIME:	DATE AND TIME:		TAT STD

-- ALL SAMPLES ARE SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE --

jerome.stout@watkinsmfg.com

EXHIBIT B

Date and Time of Inspection:	Date Report Written:
2/16/2018 1400	2/20/2018

Part I. General Information

Site Information

Facility Name: Watkins Mfg.

Facility Address: 1280 Park Center Dr. Vista CA. 92081

Photos Taken: (Circle one)	(Yes)	No	Photo Reference IDs: 22018-1 through 22018-6

Weather

Estimate storm beginning: (date and time) N/A	Estimate storm duration: (hours) N/A
Estimate time since last runoff from any drainage area: (days or hours) 1 month	Rain gauge reading and location: (in.) 3 in.

Is a "Qualifying Storm Event" predicted or did one occur (i.e. discharge from site preceded by 48-hrs without discharge)? ~~[illegible]~~ Yes

If yes, summarize forecast: 40% chance of rain on Thursday, 22 feb 2018.

Exception Documentation (explanation required if inspection could not be conducted)

Inspector Information

Inspector Name: Mark Atwood	Inspector Title: Env. Supervisor
Signature: [signature]	Date: 2/20/2018

Part II. BMP Observations. Describe deficiencies in Part III.

Minimum BMPs (List and Inspect all BMPs Implemented)	Failures or other Deficiencies (yes, no, N/A)	Action Required (yes/no)	Action Implemented (Date)
Preventative Maintenance			
housekeeping (wood)	yes	Yes	
housekeeping (trash comp.)	yes	Yes	
housekeeping (warehouse)	yes	Yes	
Spill and Leak Prevention and Response			
	NO	NO	

Minimum BMPs (List and Inspect all BMPs Implemented)		Failures or other Deficiencies (yes, no, N/A)	Action Required (yes/no)	Action Implemented (Date)
Materials Handling and Waste Management				
		No	No	
Erosion and Sediment Controls				
		No	No	
Exposure Minimization BMPs				
Materials uncovered	Warehouse	yes	yes	
Stormwater containment and Discharge Reduction BMPs				
Non stormwater discharge tooling		yes	yes	
Erosion and Sediment Controls				
Treatment Control BMPs				
		No	No	

Minimum BMPs (List and Inspect all BMPs Implemented)	Failures or other Deficiencies (yes, no, N/A)	Action Required (yes/no)	Action Implemented (Date)
Other Advanced BMPs			
	NO	NO	

Part III: Descriptions of BMP Deficiencies		
Deficiency	Repairs Implemented Note: Repairs must be completed as soon as possible. Repairs Required (Y/N)	Corrective Action Implemented
1. Debris left on the ground	NO	
2.	NO	
3.	NO	
4. Metal materials are stored outside & uncovered	NO	
5. A sink in loading discharges to the ground	NO	
6.		
7.		
8.		

Part IV: Additional Corrective Actions Required. Identify additional corrective actions not included with BMP deficiencies (Part III above). Identify BMPs that need more frequent inspection. Note if SWPPP change is required.	
Required Actions	Implementation Date